

OFFICE CONTROL  
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OE ORDER #

94-RF 00804

## EG&G ROCKY FLATS

EG&G ROCKY FLATS, INC

ROCKY FLATS PLANT P O BOX 464 GOLDEN COLORADO 80402 0464 (303) 966 7000

January 18, 1994

94-RF-00804

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DOE, RFO

Attn: D A Brockman

POND WATER MANAGEMENT IM/IRA -TGH-019-94

Two events occurred last week which will significantly, and perhaps adversely, alter the course of the Pond Water Management Interim Measures/Interim Remedial Action Plan (IM/IRA). First, Environmental Protection Agency (EPA) officially informed DOE, RFO of their decision to specify new milestones for the Pond Water Management IM/IRA. Second, EPA and the Colorado Department of Health (CDH) stated their views on ideal pond water operations and practices during a meeting held on January 13, 1994.

EPA's new milestones, if unchallenged, will expedite the scheduled release of an IM/IRA document for the second time. The Surface Water Division (SWD) previously provided DOE, RFO with a Draft Pond Water Management IM/IRA for submittal to regulatory agencies on November 22, 1993, to prevent issuance of a Notice of Violation. This document was released in good faith eleven weeks ahead of schedule upon verbal request from DOE, RFO. It was also released without internal review by EG&G Rocky Flats Plant, Inc. or DOE, RFO. As such, the document did not meet the quality standards normally associated with a plan of this magnitude.

While we cannot change the past, we can learn from the past and prevent similar mistakes in the future. Any schedule must allow sufficient time for EG&G Rocky Flats and DOE, RFO internal reviews, particularly legal. EPA's new milestones will not allow sufficient time for internal reviews, nor would the document contain the information required by the regulators (i.e., National Pollutant Discharge Elimination System (NPDES) permit, Landfill Pond designation as F039, OU7 leachate, and coordination with Industrial Area IM/IRA), because these issues are still under negotiation.

The meeting of January 13, 1994, raised concerns within SWD because the actions proposed by EPA and CDH are inconsistent with other laws under the proposed scenario which assumes the ponds are Waters of the United States. The designation of the ponds under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) jurisdiction does not abrogate them from other applicable environmental laws. It is illegal under Colorado law to divert water or hold water in surface impoundments without obtaining appropriate water rights. DOE, RFO does not own any water rights for the Rocky Flats Plant. Therefore, the current and future "batch" pond water operations of detaining water for sampling and releasing only upon satisfactory test results and concurrence from CDH appears to be illegal. Legal actions could be taken against both the owner and operator. Even if DOE, RFO, CDH and EPA come to agreement on the above issues, it is not clear to EG&G Rocky Flats that the

A-71106-0000305

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agreement would conform to all applicable laws EG&G Rocky Flats therefore recommends that DOE, RFO enter into dispute resolution for the Pond Water IM/IRA, and suspend preparation of the document until legal issues concerning Waters of the United States, the NPDES permit, and the Landfill Pond are resolved Until these legal issues are resolved, any document which might be prepared will not be complete or pass public scrutiny



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Orig and 1 cc - M N Silverman